

Consideration of approval of a nonrule policy document to address dispute resolution services by an employee of the Commission's Division of Hearings for other state or local government entities; Administrative Cause No. 14-046A

For consideration is a nonrule policy document to memorialize the approval of an exemption from ghost employment under IC 35-44.1-1-3(f) for services by an employee of the Division of Hearings, Natural Resources Commission, for another state or local government entity. The approval would authorize an employee to serve as mediator, administrative law judge, hearing officer, or in a similar capacity to assist with dispute resolution on behalf of another governmental entity during normal hours of employment. The subject is addressed currently by an internal document approved by the Chair in November. The recommendation is for approval of a nonrule policy document as set forth below.

**NATURAL RESOURCES COMMISSION
Information Bulletin #73
April 1, 2014**

SUBJECT: Dispute resolution services for other state and local governmental entities

1. Purpose

The purpose of this information bulletin is to authorize, under IC 35-44.1-1-3(f), an employee of the division of hearings to serve as mediator, administrative law judge, hearing officer, or in a similar capacity to assist with dispute resolution on behalf of another governmental entity during normal hours of employment.

2. Definitions

The following definitions apply:

- (A) "Another governmental entity" means a state agency or local governmental agency other than an exempted agency.
- (B) "Chair" means the chair of the commission.
- (C) "Commission" means the natural resources commission established by IC 14-10-1-1.
- (D) "Division of hearings" refers to the commission's division of hearings authorized by IC 14-10-2-2.
- (E) "Exempted agency" includes each of the following:
 - (1) Advisory council established by IC 14-9-6-1.
 - (2) Board of licensure for professional geologists established by IC 25-17.6-2-1.
 - (3) Board of registration for soil scientists established by IC 25-31.5-2-1.
 - (4) Commission.

- (5) Consolidated proceeding conducted jointly by the division of hearings and the office of environmental adjudication under IC 14-10-2-2.5.
- (6) Historic preservation review board established by IC 14-21-1-20.

(F) “Vice chair” means the vice chair of the commission.

3. Statutory authority

IC 35-44.1-1-3 addresses prohibited ghost employment by government employees. Subsection (f) provides an exception from ghost employment for qualified voluntary services as follows:

- ...an employee of a governmental entity who voluntarily performs services:
 - (1) that do not:
 - (A) promote religion;
 - (B) attempt to influence legislation or governmental policy;
 - or
 - (C) attempt to influence elections to public office;
 - (2) for the benefit of:
 - (A) another governmental entity; or
 - (B) an organization that is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code;
 - (3) with the approval of the employee’s supervisor; and
 - (4) in compliance with a policy or regulation that:
 - (A) is in writing;
 - (B) is issued by the executive officer of the governmental entity; and
 - (C) contains a limitation on the total time during any calendar year that the employee may spend performing the services during normal hours of employment;
- is considered to be performing duties related to the operation of the governmental entity.

4. Written statement of approval for service to another governmental entity

The commission grants written approval under IC 35-44.1-1-3(f), for service which is considered performing commission duties and does not constitute ghost employment, as follows:

- (A) Except as otherwise provided in this information bulletin, an employee of the division of hearings is authorized to spend no more than a total of 75 hours in a calendar year serving as mediator, administrative law judge, hearing officer, or a similar capacity to assist with dispute resolution on behalf of another governmental entity.
- (B) The chair may approve a written agreement between the commission and another state agency in which services are reciprocated. Reciprocal service time provided by the other state agency to the commission is added to the maximum service authorization of an employee under Part (A).
- (C) At the request of another agency supervisor, the chair (or the vice chair, in the absence of the chair) may approve the assignment of an employee to serve as mediator or administrative law

judge for one proceeding in a calendar year. The hours served under this Part are not limited by Part (A) but shall not exceed 75 additional hours without reimbursement to the commission or a written waiver of reimbursement.

5. Service to an exempted agency

Service by a division of hearings employee to an exempted agency is a duty within the ordinary scope of employment and does not constitute ghost employment.

6. Review during commission meeting

After experience is gained with implementation of this information bulletin, and not later than January 1, 2016, the subject would be presented for commission review.

7. History

This subject was addressed previously by an internal document approved by the chair on November 18, 2013.